

CV 14

7203

FILED
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KEVIN ELLIS,

Plaintiff,

v.

THE CITY OF NEW YORK, a municipal entity; New York Police Department Officer KENNY TUCKER (Shield No. 25322); and New York Police Department Officer RIOS,

Defendants.

x

:

Case No. 14 Civ. 7203

:

COMPLAINT

AND

JURY DEMAND

:

ECF CASE

:

:

x

GO, MJ.

PRELIMINARY STATEMENT

1. This is a civil rights action seeking redress for physical, mental, and emotional injuries suffered by plaintiff Kevin Ellis when NYPD Officers Tucker and Rios unlawfully arrested him and maliciously battered him, including by spraying Mr. Ellis's face with pepper spray while Mr. Ellis's hands were cuffed behind his back.

JURISDICTION AND VENUE

2. The Court has jurisdiction over the federal claims in this action pursuant to 28 U.S.C. §§ 1331 and 1333(a)(3) and (4) and over the state law claims pursuant to 28 U.S.C. § 1337(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy.

3. On April 22, 2014, and within ninety days after the claims asserted in this Complaint arose, plaintiff served a Notice of Claim upon the City of New York. Plaintiff's Notice of Claim is annexed hereto at Exhibit A.

4. On June 10, 2014, plaintiff attended a hearing pursuant to section 50-h of the New York General Municipal Law.

5. This action is filed within one year and ninety days of the events giving rise to plaintiff's claims. Thus, all the prerequisites of the New York General Municipal Law for filing suit have been met.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as this is the judicial district in which the events giving rise to plaintiff's claims took place.

THE PARTIES

7. Plaintiff Kevin Ellis is a United States citizen residing at 596 Van Siclen Avenue in Brooklyn, New York.

8. Defendant City of New York is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department, and does maintain the New York City Police Department ("NYPD") for the purpose of law enforcement. At all times relevant hereto, the City of New York, acting through the NYPD, was responsible for the policy, practice, supervision, implementation, and conduct of NYPD matters and was responsible for the appointment, training, supervision, and conduct of NYPD personnel. In addition, at all relevant times hereto, the City of New York was responsible for enforcing the policies, customs, procedures, rules, and practices of the NYPD, and for ensuring that NYPD personnel follows these policies, customs, procedures, rules, and practices.

9. At all times relevant hereto, defendant Police Officer Kenny Tucker (Tax Registry No. 941108, Shield No. 25322) was an officer with the NYPD, acting in the capacity of agent, servant, and employee of defendant City of New York, within the scope of his employment as such, and acting under color of state law.

10. At all times relevant hereto, defendant Police Officer Rios (whose first name, Tax Registry Number, and Shield Number are presently unknown to the plaintiff) was an officer with

the NYPD, acting in the capacity of agent, servant, and employee of defendant City of New York, within the scope of his employment as such, and acting under color of state law.

11. At all times relevant hereto, defendants Police Officers Tucker and Rios were, upon information and belief, stationed at the NYPD's 63rd precinct in Brooklyn, New York.

FACTS

12. On the night of March 11, 2014 / morning of March 12, 2014, at approximately midnight, Mr. Ellis was walking on the sidewalk of East 58th Street, near Avenue M, in Brooklyn, in the company of his childhood friend, Keysha Aguilar.

13. Mr. Ellis had just bought a slice of pizza at the local pizzeria and was eating it from a paper plate, as he and Ms. Aguilar walked towards Ms. Aguilar's home located a few blocks away on East 55th Street.

14. Mr. Ellis and Ms. Aguilar were not engaged in any illegal or suspicious activity of any kind.

15. As Mr. Ellis and Ms. Aguilar walked together on the sidewalk, Police Officers Tucker and Rios pulled up in an unmarked police car and exited the vehicle.

16. Without any explanation, Police Officer Tucker grabbed Mr. Ellis by the arms and threw him against the police car.

17. Police Officer Tucker then conducted a physical search of Mr. Ellis.

18. As the search revealed, Mr. Ellis was not in possession of any weapon or illegal substance of any kind. In fact, the only objects in Mr. Ellis's possession were his cellular telephone and his wallet, which contained his identification and approximately three hundred dollars in cash (representing the pay that Mr. Ellis had received from his employer that day).

19. Police Officer Tucker took Mr. Ellis's identification and headed back to the police car.

Police Officer Rios remained with Mr. Ellis.

20. While Police Officer Tucker was in the car, Mr. Ellis asked Police Officer Rios why the officers had stopped him.

21. Police Officer Rios responded that Mr. Ellis was stopped because he had dropped his paper plate on the ground while eating his slice of pizza.

22. Police Officer Tucker then returned from the police vehicle and claimed that Mr. Ellis had "two open warrants." In fact, there were no such warrants against Mr. Ellis.

23. Police Officer Tucker immediately placed Mr. Ellis in handcuffs. Police Officer Tucker used metal handcuffs, locking Mr. Ellis's arms behind his back. Mr. Ellis offered no resistance.

24. Being handcuffed behind his back, Mr. Ellis was secured, posed no threat whatsoever, and was totally defenseless.

25. Mr. Ellis then asked the officers whether he could give his money to Ms. Aguilar because he did not want to go to the police precinct carrying three hundred dollars in cash.

26. Police Officer Tucker said "no" and, without warning or explanation, sprayed Mr. Ellis's left eye and face with mace (or pepper spray or some similar substance) at point-blank range.

27. Police Officer Rios failed to intervene in the obviously illegal actions of Police Officer Tucker, even though he had the opportunity to do so.

28. The actions and inactions of Police Officers Tucker and Rios at all times relevant hereto occurred without any fault or provocation on the part of Mr. Ellis.

29. The officers put Mr. Ellis in the back of their police car and transported him to the NYPD's 63rd precinct in Brooklyn.

30. At the precinct, Mr. Ellis was placed in a cell. Approximately thirty to forty five minutes later, Police Officer Rios came to Mr. Ellis's cell and told Mr. Ellis that he would be issued two tickets – one for littering, and one for disorderly conduct – if Mr. Ellis said nothing about the events that had transpired. Mr. Ellis said “all right,” and he was issued the two tickets, a true and correct copy of which are attached to this complaint at Exhibit B.

31. Mr. Ellis then went to the emergency room of Kings County Hospital in Brooklyn for his injuries. He remained at Kings County Hospital until approximately 8:00 a.m. at which time he had to go to work.

32. The charges laid against Mr. Ellis by Police Officers Tucker and Rios were false. As a result of these baseless charges, Mr. Ellis was forced to appear in Court on June 12, 2014, and subsequently on a second occasion on July 15, 2014. Both of the charges laid against Mr. Ellis were dismissed.

33. The conduct of Police Officers Tucker and Rios was willful, malicious, wanton, unreasonable, unconscionable, and/or reckless, and was of such a nature that punitive damages are warranted.

34. As a direct and proximate cause of the actions of Police Officers Tucker and Rios, Mr. Ellis suffered personal injuries, including, but not limited to, extreme burning and stinging of the left eye, face and skin; inflammation of the left eye, lungs, nose and throat; temporary blindness; blurred vision; swelling of the left eye; disorientation; loss of balance and perception; respiratory injuries; as well as pain and suffering, mental anguish, embarrassment, humiliation, reputational injury, and other losses.

FIRST CLAIM FOR RELIEF
42 U.S.C. § 1983/Fourteenth Amendment – False Arrest
(Against defendants Police Officers Tucker and Rios)

35. Plaintiff hereby repeats and realleges each allegation set forth in the foregoing paragraphs as if fully set forth herein.

36. In committing the acts and omissions complained of herein, and specifically by illegally stopping, searching, arresting, and detaining Mr. Ellis, and by failing to take appropriate measures to intercede and protect him from the acts and omissions described herein, Police Officers Tucker and Rios acted under color of state law to deprive Mr. Ellis of rights protected by the United States Constitution, including, but not limited to:

- a. the right to be free from unreasonable searches of his person;
- b. the right to be free from deprivation of liberty without due process of law; and
- c. the right to equal protection under the law.

37. In committing the acts and omissions complained of herein, Police Officers Tucker and Rios breached their affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence.

38. As a direct and proximate result of Police Officers Tucker and Rios's violations of Mr. Ellis's rights under the United States Constitution, Mr. Ellis suffered the injuries set forth above.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983/Fourteenth Amendment – Excessive Force
(Against defendants Police Officers Tucker and Rios)

39. Plaintiff hereby repeats and realleges each allegation set forth in the foregoing paragraphs as if fully set forth herein.

40. In committing the acts and omissions complained of herein, and specifically by using excessive and unnecessary force against Mr. Ellis and by failing to take appropriate measures to

intercede and protect him from the acts and omissions described herein, Police Officers Tucker and Rios acted under color of state law to deprive Mr. Ellis of rights protected by the United States Constitution, including, but not limited to:

- a. the right to be free from unreasonable seizure of his person, including through excessive force;
- b. the right to be free from deprivation of liberty without due process of law; and
- c. the right to equal protection under the law.

41. In committing the acts and omissions complained of herein, Police Officers Tucker and Rios breached their affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence.

42. As a direct and proximate result of Police Officers Tucker and Rios's violations of Mr. Ellis's rights under the United States Constitution, Mr. Ellis suffered the injuries set forth above.

THIRD CLAIM FOR RELIEF

**42 U.S.C. § 1983/Fourteenth Amendment – False Imprisonment
(Against defendants Police Officers Tucker and Rios)**

43. Plaintiff hereby repeats and realleges each allegation set forth in the foregoing paragraphs as if fully set forth herein.

44. In committing the acts and omissions complained of herein, and specifically by illegally stopping, searching, arresting, and detaining, and imprisoning Mr. Ellis, Police Officers Tucker and Rios acted under color of state law to deprive Mr. Ellis of rights protected by the United States Constitution, including, but not limited to:

- a. the right to be free from false imprisonment, that being wrongful detention without good faith, reasonable suspicion, legal justification, or consent;
- b. the right to be free from deprivation of liberty without due process of law; and

c. the right to equal protection under the law.

45. In committing the acts and omissions complained of herein, Police Officers Tucker and Rios breached their affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence.

46. As a direct and proximate result of Police Officers Tucker and Rios's violations of Mr. Ellis's rights under the United States Constitution, Mr. Ellis suffered the injuries set forth above.

FOURTH CLAIM FOR RELIEF
42 U.S.C. § 1983/Fourteenth Amendment
(Against defendant City of New York)

47. Plaintiff hereby repeats and realleges each allegation set forth in the foregoing paragraphs as if fully set forth herein.

48. Defendant City of New York, through the NYPD, and acting under the pretense and color of law, permitted, tolerated and was deliberately indifferent to a pattern and practice of police abuse at the time of Mr. Ellis's abuse by Police Officers Tucker and Rios.

49. By permitting, tolerating and sanctioning a persistent and widespread policy, practice and custom pursuant to which Mr. Ellis was subjected to the abuse described above, defendant City of New York has deprived Mr. Ellis of rights, remedies, privileges, and immunities guaranteed to every citizen of the United States, secured by 42 U.S.C. § 1983, including but not limited to rights guaranteed under the Fourteenth Amendment to be free from false arrest, gratuitous and excessive force, and false imprisonment.

50. As a direct and proximate result of the policy, practice and custom detailed above, Mr. Ellis sustained the damages hereinbefore alleged.

FIFTH CLAIM FOR RELIEF

**Assault and Battery
(Against all defendants)**

51. Plaintiff hereby repeats and realleges each allegation set forth in the foregoing paragraphs as if fully set forth herein.

52. In assaulting, battering and threatening Mr. Ellis, or standing by and failing to intervene when Mr. Ellis was assaulted, defendants Police Officers Tucker and Rios, acting in their capacities as NYPD officers, and within the scope of their employment, each committed a willful, unlawful, unwarranted, and intentional assault and battery upon Mr. Ellis.

53. The assault and battery by these defendants was unnecessary and unwarranted in the performance of their duties as NYPD officers and constituted an unreasonable and excessive use of force.

54. Defendant City of New York, as employer of defendants Police Officers Tucker and Rios, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

55. As a direct and proximate result of the misconduct and abuse of authority detailed above, Mr. Ellis sustained the damages hereinbefore alleged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands the following relief against the defendants, jointly and severally, on each and every cause of action set forth herein:

- a. compensatory damages in an amount just and reasonable;
- b. punitive damages to the extent allowable by law;
- c. attorney's fees pursuant to 42 U.S.C. § 1988;
- d. costs and disbursements of this action;
- e. pre- and post-judgment interest; and

f. such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands trial by jury on all claims in this action.

Date: December 10, 2014



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